-IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 664-DB of 1997
DATE OF DECISION: 9.2.2007
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Ramesh Kumar and another

..APPELLANTS

VS.

State of Haryana

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Ms. Baljit Bhullar, Advocate**
for the appellant Ramesh.

Mr. Gorakh Nath, Advocate
for appellant Naresh.

Mr. Kulvir Narwal, Addl. A.G. Haryana
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ARVIND KUMAR, J.

The appellants Ramesh and Naresh alongwith another person namely Raju @ Rajkumar were charged for having committed the murder of one Jawahar Lal on 4.10.1995. The learned Addl. Sessions Judge, Sonipat, who tried the case, vide the judgment dated 5.4.1997 found the appellants Ramesh and Naresh guilty of the offence charged and accordingly vide order dated 7.4.1997 sentenced them to undergo imprisonment for life. Each of them were required to pay a fine of Rs.25,000/- and in default thereof further rigorous imprisonment for 2 years has been awarded. The learned trial court, however, acquitted the co-accused Raju @ Rajkumar for the charged offence, after extending benefit of doubt to him.

The present appellants Ramesh and Naresh, through the instant appeal, have laid challenge to the above-referred judgment and order of their conviction passed by the trial court.

The facts emerges out from the record, necessary for the

disposal of the instant appeal, are that Gango Devi and Kanta Devi, the real sisters were married to Kanhiya and Jawahar Lal (since deceased) respectively. Due to strained relations, Kanhiya alongwith his son Ramesh (appellant No.1) started residing separately from his wife Gango Devi at village Basodi whereas Gango Devi and her two other sons including Raju (since acquitted by the trial court) started living at Sikka Colony, Sonepat, where her sister Kanta Devi was residing with her family. Jawahar Lal, husband of Kanta, used to take care of Gango Devi and her sons, due to which, according to prosecution, Jawahar Lal earned displeasure of appellant Ramesh, elder son of Gango Devi, who was not happy with the visits of Jawahar Lal to his mother. Similarly, Ramesh was not liked by Jawahar Lal.

According to the prosecution, following this resentment, on 4.10.1995 at about 6:45 a.m. when Jawahar Lal was going towards Railway Station on a scooter bearing registration No. HR10-9126, he was intercepted by appellants Naresh, Ramesh and his younger brother Raju. Naresh and Raju caught hold of Jawahar Lal whereas Ramesh inflicted blows on left side of chest and abdomen and on front side of forehead of Jawahar Lal with a knife and they all fled away from the spot with the scooter, which Jawahar Lal was driving. The occurrence was witnessed by Ashok Kumar (PW1), brother of Jawahar Lal and Chander Parkash (PW2), who were standing in the street. Both of them removed Jawahar Lal to General Hospital, Sonepat where Jawahar Lal was declared dead by the Doctor.

On the basis of statement (Ex.PA) made by Ashok Kumar, present case was registered. Necessary investigations were carried out by Ram Parkash ASI (PW7). Autopsy on the dead body of Jawahar Lal was conducted by Dr. Arun Garg (PW.4). During the course of investigations, appellants Ramesh and Naresh were arrested. Scooter bearing No. HR10-9126 and one knife recovered from its dickey were taken into police possession vide separate recovery memos (Ex.PB and Ex.PC respectively). On completion of usual formalities of investigations, final report under Section 173 Cr.P.C. was filed against the appellants Ramesh and Naresh only and Raju @ Rajkumar was shown in column No.2 in the challan since

he was found innocent in the investigations.

The Illaqa Magistrate committed the challan to the court of Sessions for trial of the appellants.

It is apposite to mention here that the trial court, being of the view that Raju @ Rajkumar was also instrumental in the murder of Jawahar Lal, of its own, summoned him to face trial alongwith other accused.

After procuring the presence of co-accused Raju @ Rajkumar, the trial court framed charges under Section 302 IPC against accused Ramesh Kumar and under Section 302 IPC read with Section 34 IPC against the accused Naresh and Raju @ Raj Kumar.

To prove its case, the prosecution examined PW.1 Ashok Kumar informant/ author of the FIR, PW.2 Chander Parkash, an eye-witness ,PW.3 Const. Inder Pal who prepared the scaled site plan (Ex.PE) of the place of occurrence, PW.4 Dr. Arun Garg, PW.5 ASI Pyare Lal; he had recorded the statement of Const. Raj Singh, PW.5 HC Mool Chand, who tendered his affidavit Ex.PI, PW.7 Ram Parkash Investigating Officer, PW.8 Const. Raj Singh; he delivered the special report of the case at the residence of Illaqa Magistrate and PW.9 Const. Ram Kumar, who also tendered his affidavit Ex.PL.

Thereafter, the prosecution evidence was closed after tendering report of FSL (Ex.PM).

The accused when examined under Section 313 Cr.P.C., claiming it to be a blind murder, pleaded their false implication in this case.

On conclusion of trial, the trial court dealt with the appellants Ramesh and Naresh and their co-accused Raju @ Rajkumar in the manner indicated above.

We have heard learned counsel for the appellants as well as learned State counsel and with the assistance rendered by them, have carefully gone through the records of the case.

It has been argued on behalf of the appellants that there is delay in sending the special report to the Magistrate, which reached at 2.00 p.m. on 4.10.1995, to say that the FIR is ante-timed and fatal to the case of the prosecution. The contention is meritless. It needs to emphasise that it is not as if every delay in sending the special report to the Illaqa Magistrate would necessarily lead to the interference that the FIR has not been lodged at the time stated or has been ante-timed or that the investigation is not fair and forthright. If in a case, it is found that the FIR was recorded without delay and the investigation started on that FIR, then improper and objectionable the delayed receipt of the report by the Magistrate concerned, that cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable. In the instant case, the occurrence had taken place at 6:45 a.m. on 4.10.1995 and Jawahar Lal deceased was removed to the hospital and the medical ruqa (Ex.PH) was sent to Police Post, General Hospital, Sonepat at 7:05 a.m.. Upon information, ASI Ram Parkash (PW7) reached the General Hospital, Sonepat and recorded the statement of PW.1 Ashok Kumar, complainant at 8:15 a.m. and the formal FIR was recorded at 8:55 a.m. No doubt the special report reached the Illaqa Magistrate at 2.00 p.m., but it is evident from the statement of PW.8 const. Raj Singh that the special report was handed over to him at 10:00 a.m. and consequently he delivered the same at 2:00 p.m. It can also not be over-looked that in the present set up no police station is having only one case to looked into. In this backdrop of the sequence of the events it cannot be said that the delivery of the special report was delayed, to say that it has affected the case of the prosecution, especially under the circumstances when the FIR was recorded without delay and the investigation started on that FIR, as it is evident from the statement of PW.7 ASI Ram Parkash. It has also been contended by the counsel for the appellants that PW.1 Ashok Kumar has admitted that police post, sikka colony, Sonepat falls on the way from place of occurrence to General Hospital, Sonepat but despite that they did not lodge the report on their way to hospital. In this case Jawahar Lal had received multiple injuries on his person and the natural impulse of the witnesses was first to remove him to hospital for providing medical aid and not to waste time while going to the police for lodging the report. The FIR, as discussed above, in the instant case was lodged with utmost promptness,

which contains full narration of the manner in which the deceased Jawahar Lal was inflicted injuries alongwith weapon of offence. Therefore, if no report was lodged by them while on the way to Hospital, it cannot affect the prosecution case at all, in any manner.

The prosecution case mainly rests on the testimonies of PW.1 Ashok Kumar and PW.2 Chander Parkash. The testimony of PW.1 Ashok Kumar has been assailed being closely related to the deceased. No doubt PW.1 Ashok Kumar is the brother of the deceased, but it is not the absolute law that the evidence of relation witness is not entitled to any weight but this very circumstance would add to the value of his evidence because he would be interested in ensuring that the real culprit responsible for the murder be punished and not the innocent person. Further, his statement is duly corroborated by PW.2 Chander Parkash, an independent witness, on material particulars to the effect that Jawahar Lal was caught hold by co-accused Naresh and Ramesh having inflicted knife blow on his chest, abdomen and front forehead. They were subjected to cross-examination. They stood firm to their stand. The counsel for the appellants have argued that in the medical ruqa (Ex.PH) so sent to the police about having brought Jawahar Lal dead in the General Hospital, Sonepat, the names of Ashok Kumar and Chander Parkash Pws are conspicuous by their absence when Jawahar Lal was removed to the hospital. The contention is meritless. Had the said witnesses not present at the spot and Jawahar Lal if brought to the hospital by a stranger, then in the medical ruqa (Ex.PH), the name of Jawahar Lal would not have been reflected. Thus, merely by non-mentioning of their names in the medical ruqa (Ex.PH), it cannot be presumed that they had not accompanied the deceased in the hospital. Such an assumption is not referable to any legal or factual presumption.

It has next been contended that non-intervention of the witnesses in order to save Jawahar Lal shows their non-presence at the time of the occurrence. This argument does not convince us. It is evident from the statemnet of PW.1 Ashok Kumar that on the date of occurrence he was following his brother on his own scooter and when he reached near the house of Satpal, he started talking with Chander Parkash, who met him there

and in the meantime the accused emerged there and the injuries to Jawahar Lal were given. It is not evident from their statements that there was any altercation prior to the occurrence. The accused suddenly attacked upon Jawahar Lal and the witnesses were unaware of the attack and in this situation it was not expected of them to intervene. Similar was the situation in **Hari Singh M. Vasava Vs. State of Gujarat, 2002 Supreme Court Cases (Crl.) 654,** and it was held by the Apex Court that merely because the eye witnesses failed to intervene to save the deceased cannot be made a ground to reject their testimony.

The next contention that though, admittedly, the occurrence had taken place in a street surrounded by several residential houses and the people had been coming and going but despite that no independent witness from that locality had been examined, is again not sustainable. It is nobody's case that any independent witness from that locality had witnessed this occurrence or deliberately with-held by the prosecution. Thus, non-examination of any other person from that locality does not affect the case of the prosecution at all. It can also not be over-looked that there is independent testimony of PW.2 Chander Parkash, which is suffice and corroborated with the statement of PW.1 Ashok Kumar, without any necessity for any other independent corroboration.

It has further been contended that, admittedly, the clothes of Pws Ashok Kumar and Chander Parkash were stained with blood while removing Jawahar Lal to the hospital, but the same had not been produced before the police, which falsifies their presence. This argument has been developed mainly on the basis of statement of PW.7 ASI Ram Parkash who stated that PW.1 Ashok Kumar and PW.2 Chander Parkash had not shown their blood stained clothes. However, a bare perusal of the statements of both the witnesses suggest that blood stained clothes were shown to the police, but not taken into possession. Mere non-seizure of the blood stained clothes is no ground to discard the evidence of any witness. Normally, no investigating agency took the trouble to seize the clothes worn by the witnesses at the time they saw the occurrence merely because their clothes too had collected stains of blood during any post-event activities and

such like omission does not discredited the testimonies of the witnesses. The medical evidence supports the prosecution case qua the time of occurrence, nature of injuries and the weapon i.e. knife used in the commission of the crime.

Further, the contention that on the same evidence Raju co-accused has been acquitted whose role was similar as that of appellant Naresh is again not sustainable because merely a co-accused has been acquitted on the basis of said evidence, the same does not lead, as a natural corollary, that the same benefit be given to the accused-appellant Naresh as his case stand differentiated, as discussed by the trial court, in its judgment, from the acquitted accused and we endorse the view taken by the trial court in this regard.

No other argument has been raised.

As a sequel to the above discussion, we find no infirmity in the impugned judgment of the trial court. The appeal is wholly without merit and the same is accordingly dismissed.

(ARVIND KUMAR)
JUDGE

February 9 ,2007 **(MEHTAB S. GILL)**
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